

Department of the Army, DoD

§ 504.1

having authority to deliver may forward the request with his recommendation for disposition direct to The Judge Advocate General for advice before taking his action.

(f) *Procedure for executing delivery.* When the commanding officer specified in paragraph (a) of this section authorizes the delivery of a person to the civil authorities, he will inform the appropriate requesting agency or official of the time and place of delivery. In addition, he will advise the requesting agency or official that delivery of the person will be made at no expense to the Department of the Army and with the understanding that the civil agency or official will advise the delivering commander of the outcome of the trial and, if the Army authorities desire to return the person, will deliver him to the place of original delivery or to an Army installation nearer the place of civil detention, as may be designated by the Army authorities, at no expense to the Department of the Army. A written receipt, in substantially the following form, should be executed by the official who takes delivery of the accused:

In consideration of the delivery of _____ (Grade and name) _____, (Service number) _____, United States Army, to the civil authorities of the: _____, (United States) _____, (State of) _____, at _____, (Place of delivery) for trial upon the charge of _____, hereby agree, pursuant to the authority vested in me as _____ (Official designation) that the commanding officer of _____ (General court-martial jurisdiction) will be informed of the outcome of the trial and that _____ will be returned to the Army authorities at the aforesaid place of delivery or to an Army installation nearer the place of civil detention, as may be designated by the authorities of the Department of the Army, without expense to such Department or to the person delivered, immediately upon dismissal of the charges or completion of the trial in the event he is acquitted, or immediately upon satisfying the sentence of the court in the event he is convicted and a sentence imposed, or upon other disposition of the case, unless the Army authorities shall have indicated that return is not desired.

The above agreement is substantially complied with when the civil agency or official advises the delivering commander of the outcome of the trial of

the alleged offender and of his prospective release to the Army authorities, and the individual is furnished transportation and necessary cash to cover his incidental expenses en route to an installation designated by Army authorities.

(g) *Return to Army control.* Upon being advised of the outcome of the trial or other disposition of the charges against the alleged offender, the commanding officer specified in paragraph (a) of this section will, if return is desired, inform the appropriate civil agency or official of the name and location of the Army installation to which such person is to be delivered. Either the place of original delivery or an installation nearer the place of civil detention of the offender may be designated in accordance with existing policies governing assignments and transfers of personnel.

(Sec. 3012, 70A Stat. 157; 10 U.S.C. 3012)

[28 FR 2732, Mar. 20, 1963]

PART 504—OBTAINING INFORMATION FROM FINANCIAL INSTITUTIONS

Sec.

504.1 General.

504.2 Procedures.

APPENDIX A TO PART 504—REQUEST FOR BASIC IDENTIFYING ACCOUNT DATA—SAMPLE FORMAT

APPENDIX B TO PART 504—CUSTOMER CONSENT AND AUTHORIZATION FOR ACCESS—SAMPLE FORMAT

APPENDIX C TO PART 504—CERTIFICATE OF COMPLIANCE WITH THE RIGHT TO FINANCIAL PRIVACY ACT OF 1978—SAMPLE FORMAT

APPENDIX D TO PART 504—FORMAL WRITTEN REQUEST FOR ACCESS—SAMPLE FORMAT

APPENDIX E TO PART 504—CUSTOMER NOTICE OF FORMAL WRITTEN REQUEST—SAMPLE FORMAT

AUTHORITY: 12 U.S.C. 3401 *et seq.*, Pub. L. 95-630, unless otherwise noted.

SOURCE: 46 FR 60195, Dec. 9, 1981, unless otherwise noted.

§ 504.1 General.

(a) *Purpose.* This regulation provides DA policies, procedures, and restrictions governing access to and disclosure of financial records maintained by

§ 504.1

32 CFR Ch. V (7–1–03 Edition)

financial institutions during the conduct of Army investigations or inquiries.

(b) *Applicability and scope.* (1) This regulation applies to all DA investigative activities conducted by the Active Army, the Army National Guard, and the US Army Reserve.

(2) The provisions of 12 U.S.C. 3401 et seq. do not govern obtaining access to financial records maintained by financial institutions located outside of the states or territories of the United States, Puerto Rico, the District of Columbia, Guam, American Samoa, or the Virgin Islands. The procedures outlined in § 504.2(d)(4) will be followed in seeking access to financial information from these facilities.

(3) This regulation applies only to financial records maintained by financial institutions as defined in § 504.1(c)(1).

(c) *Explanation of terms.* For purposes of this regulation, the following terms apply:

(1) *Financial institution.* Any office of a—

- (i) Bank.
- (ii) Savings bank.
- (iii) Credit card issuer as defined in section 103 of the Consumers Credit Protection Act (15 U.S.C. 1602(n)).
- (iv) Industrial loan company.
- (v) Trust company.
- (vi) Savings and loan association.
- (vii) Building and loan association.
- (viii) Homestead association (including cooperative banks).
- (ix) Credit union.
- (x) Consumer finance institution.

This includes only those offices located in any State or territory of the United States, or in the District of Columbia, Puerto Rico, Guam, American Samoa, or the Virgin Islands.

(xi) Military banking contractors located outside the States or territories of the United States or the District of Columbia, Puerto Rico, Guam, American Samoa, or the Virgin Islands.

(2) *Financial record.* An original record, its copy, or information known to have been derived from the original record held by a financial institution, pertaining to a customer's relationship with the financial institution.

(3) *Person.* An individual or partnership of five or fewer individuals. (Per DODD 5400.12.)

(4) *Customer.* Any person or authorized representative of that person—

(i) Who used or is using any service of a financial institution.

(ii) For whom a financial institution is acting or has acted as a fiduciary for an account maintained in the name of that person.

(5) *Law enforcement inquiry.* A lawful investigation or official proceeding that inquires into a violation of, or failure to comply with, a criminal or civil statute or any enabling regulation, rule, or order issued pursuant thereto.

(6) *Army law enforcement office.* Any army element, agency, or unit authorized to conduct investigations under the Uniform Code of Military Justice or Army regulations. This broad definition of, Army law enforcement office includes military police, criminal investigation, inspector general, and military intelligence activities conducting investigations of violations of law or regulation.

(7) *Personnel security investigation.* An investigation required to determine a person's eligibility for access to classified information, assignment or retention in sensitive duties, or other designated duties requiring such investigation. Personnel security investigation includes investigations of subversive affiliations, suitability information, or hostage situations conducted to make personnel security determinations. It also includes investigations of allegations that—

(i) Arise after adjudicative action, and

(ii) Require resolution to determine a person's current eligibility for access to classified information or assignment or retention in a sensitive position. Within DA, personnel security investigations are conducted by the Defense Investigative Service.

(d) *Policy—*(1) *Customer consent.* It is DA policy to seek customer consent to obtain a customer's financial records from a financial institution unless doing so would compromise or harmfully delay a legitimate law enforcement inquiry. If the person declines to consent to disclosure, the alternative

Department of the Army, DoD

§ 504.2

means of obtaining the records authorized by this regulation will be used. (See § 504.2 (c) through (g).)

(2) *Access requests.* Except as provided in paragraph (d)(3) of this section and §§ 504.1(f)(1), 504.2(g) and 504.2(j), Army investigative elements may not have access to or obtain copies of the information in the financial records of any customer from a financial institution unless the financial records are reasonably described and the—

(i) Customer has authorized such disclosure (§ 504.2(b));

(ii) Financial records are disclosed in response to a search warrant which meets the requirements of § 504.2(d);

(iii) Financial records are disclosed in response to a judicial subpoena which meets the requirements of § 504.2(e); or

(iv) Financial records are disclosed in response to a formal written request which meets the requirements of § 504.2(f).

(3) *Voluntary information.* Nothing in this regulation will preclude any financial institution, or any officer, employee, or agent of a financial institution, from notifying an Army investigative element that such institution, or officer, employee or agent has information which may be relevant to a possible violation of any statute or regulation.

(e) *Authority.* (1) Law enforcement offices are authorized to obtain records of financial institutions per this regulation, except as provided in § 504.2(e).

(2) The head of a law enforcement office, of field grade rank or higher (or an equivalent grade civilian official), is authorized to initiate requests for such records.

(f) *Exceptions and waivers.* (1) A law enforcement office may issue a formal written request for basic identifying account information to a financial institution as part of a legitimate law enforcement inquiry. The request may be issued for any or all of the following identifying data:

(i) Name.

(ii) Address.

(iii) Account number.

(iv) Type of account of any customer or ascertainable group of customers associated with a financial transaction or class of financial transactions.

(2) A request for disclosure of the above specified basic identifying data on a customer's account may be issued without complying with the customer notice, challenge, or transfer procedures described in § 504.2. However, if access to the financial records themselves is required, the procedures in § 504.2 must be followed. (A sample format for requesting basic identifying account data is in app. A.)

(3) No exceptions or waivers will be granted for those portions of this regulation required by law. Submit requests for exceptions or waivers of other aspects of this regulation to HQDA(DAPE-HRE), WASH, DC 20310.

§ 504.2 Procedures.

(a) *General.* A law enforcement official seeking access to a person's financial records will, when feasible, obtain the customer's consent. This chapter also sets forth other authorized procedures for obtaining financial records if it is not feasible to obtain the customer's consent. Authorized procedures for obtaining financial records follow. All communications with a US Attorney or a US District Court, as required by this regulation, will be coordinated with the supporting staff judge advocate before dispatch.

(b) *Customer consent.* (1) A law enforcement office or personnel security element may gain access to or a copy of a customer's financial records by obtaining the customer's consent and authorization in writing. (See app. B for a sample format.) Any consent obtained under the provisions of this paragraph must—

(i) Be in writing, signed, and dated.

(ii) Identify the particular financial records being disclosed.

(iii) State that the customer may revoke the consent at any time before disclosure.

(iv) Specify the purpose of disclosure and to which agency the records may be disclosed.

(v) Authorize the disclosure for a period not over 3 months.

(vi) Contain a "Statement of Customer Rights Under the Right to Financial Privacy Act of 1978" (app. B).

(2) Any customer's consent not containing all of the elements listed in